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The 1971-1972 Montana Constitutional Convention

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As Montana enters its ninth decade under the original statehood constitution, strong currents of governmental reform are at work. Pressure for revitalization of state government led to public approval of a constitutional convention and of a comprehensive executive reorganization amendment in November 1970. Implementation of the 19-department executive reorganization plan is taking place concurrently with the meeting of the constitutional convention.

Montana's constitution was written in 1889 and provides a framework for government that remains substantially unaltered in spite of some 37 amendments. It is not surprising that state and local officials have found it increasingly difficult to meet their responsibilities and cope with present-day problems with a political apparatus largely inherited from the 19th century. Urban and community problems have become more and more complex and are compounded by sometimes restrictive, sometimes ambiguous constitutional provisions. Public attention has also been focused on the need for modernizing the legislative and judicial branches of government. The 1971 legislature, unable to resolve major questions of tax policy, and plagued with legislative reapportionment problems, held two special sessions in March and June 1971. The fiscal question was finally referred to the electorate in November 1971, and Montana voters rejected by a 2-1 margin a general retail sales tax—Montana is one of the handful of states that does not use this source of state revenue—opting instead for an increase in state income taxes. The reapportionment issue was finally decided in federal district court. The court declared the first apportionment plan adopted by the 1971 legislature unconstitutional, and the legislature approved a revised plan during the second special session. This plan was also challenged, but the judges approved its use for the election of delegates to the constitutional convention "because of the imminence of the selection of delegates . . ." Later, in November 1971, the court's final ruling upheld the second apportionment plan for legislative elections as well.

The Convention

Montana's 1971-1972 constitutional convention met November 29 in Helena, the state capitol. At the

outset of the three-day organizational session the delegates, 58 democrats, 36 republicans and six independents, engaged in party caucuses and some partisan exchanges. But several factors—the election of a truly bipartisan leadership, the naming of some republicans and an independent to committee chairmanships, and the decision to keep delegates seated alphabetically rather than by party—served to unite the delegates, and fostered an atmosphere of non-partisan harmony.

Leo Graybill, Jr., a democrat from Great Falls, was elected president of the convention. Graybill is a 47 year old attorney. Although this is his first statewide office, Graybill comes from a political background: he is the son of a former democratic national committeeman; he unsuccessfully sought the eastern district congressional seat in 1960 and 1962; and he currently heads the Great Falls International Airport Commission. Other convention officers include: first vice-president, John Toole (R-Missoula, insurance consultant); second vice-president, Bruce Brown (I-Miles City, attorney), third vice-president, Mrs. Dorothy Eck, (D-Bozeman); and secretary, Mrs. Jean Bowman (R-Billings).

The convention established four procedural committees: Rules and Resolution; Style, Drafting and Transition; Public Information; and Administrative; and ten substantive committees: Bill of Rights, Suffrage and Elections; Legislative; Executive; Judiciary; Local Government; Revenue and Finance; Education and Public Lands; Public Health Welfare and Labor; Natural Resources and Agriculture; and General Government and Constitutional Amendment. By a vote of 68-30 the convention delegates vested the power to appoint committee chairmen in the president. Underscoring his belief in the need for bipartisanship, Graybill divided substantive committee chairmanships among six democrats, three republicans and one independent. Three of the four procedural committees are chaired by republicans; the fourth by a democrat. Committee appointments, which were announced on the third day of the session, also reflect the bipartisan approach. Delegates were asked their committee preference and, according to Graybill, 80 per cent of the delegates got their first choice while 12 per cent received their second choice.

In other actions the convention hired an executive

director, Dale A. Harris, who had served the 1969-70 Constitution Revision Commission, and the 1971 Constitutional Convention Commission, in the same capacity. Additional staff will be hired by the Administrative Committee. Delegates also adopted a resolution banning lobbyists from the convention chambers for one-half hour before, during and after sessions.

The constitutional convention will reconvene in plenary session January 17, 1972, and may remain in session as long as necessary, although the appropriation will probably limit the convention to 60 to 80 working days. The revisions, alterations or amendments to the constitution adopted by the convention will be submitted to Montana voters for ratification or rejection at an election set by the convention. The convention might provide for a special ratification election November 7, 1972, general election day.

The steps culminating in these events began in the mid-1960's when state legislators and citizen groups started pressing for constitutional reform. The 1967 Legislative Assembly requested the Montana Legislative Council to study the constitution. Acting on the recommendation of this study, the 1969 legislature took further action: (1) creating the Montana Constitution Revision Commission to continue study of the Montana Constitution and to recommend alternative methods of constitutional revision and (2) placing a referendum to call a constitutional convention on the 1970 general election ballot. In addition to preparing research studies, the Constitution Revision Commission concluded that a constitutional convention would be the most feasible and desirable method of changing the constitution and supported a public information program to gain approval of the referendum. At the general election November 3, 1970 Montana voters approved the referendum by a margin of 133,482 to 71,643, thereby directing the 1971 legislature to enact enabling legislation for a constitutional convention.

The convention enabling act adopted by the 1971 legislature provided for a preparatory commission in addition to provisions for the election of delegates, the time and place for convening the convention, compensation for members of the convention, regulation of lobbying, and alternative methods for submitting convention proposals to the electorate. A total of \$689,821 was appropriated for the constitutional convention and related activities: \$499,281 to the constitutional convention; \$149,540 to the Constitutional Convention Commission; and \$41,000 to the Secretary of State for election expenses. For each day the convention is in session members will be paid \$20 a day per diem and \$25 a day for expenses—the current compensation of legislators. The Secretary of State is responsible for registering and licensing convention lobbyists. Convention lobbyists are required to submit bi-monthly financial reports on all expenditures to promote or oppose constitutional provisions. The convention may submit proposals for ratification as a unit in the form of a new constitution, as a unit with the exception of separate proposals to be voted upon individually, or in the form of a

series of separate amendments. The convention will fix the dates upon which proposals adopted by the voters take effect; the convention is also authorized to submit to the 1973 legislature a schedule of proposed transitional legislation.

Convention Preparation

The convention enabling act created a temporary state agency, the Montana Constitutional Convention Commission to prepare for the constitutional convention. The Governor, Supreme Court, House of Representatives and Senate each appointed four members to the Constitutional Convention Commission; legislators were prohibited from serving on the Commission. According to provisions in the enabling act the active role of the Commission ceased when the convention met, but the terms of office of the Commission members continue until final adjournment of the convention.

The primary function of the Constitutional Convention Commission, stated in the enabling act, was "to undertake studies and research; to compile, prepare and assemble essential information for the delegates, without any recommendation." The phrase "without any recommendation" was added late in the legislative process and implied some limitation on the format and approach utilized in the studies. However, the Commission reprinted two earlier studies of the Montana Constitution: the 1968 *Montana Legislative Council Report on the Montana Constitution* and *Constitutional Provisions Proposed by the Constitution Revision Commission Subcommittees*. The Legislative Council study included a section-by-section analysis of the Montana Constitution and concluded that more than 50 per cent of its provisions are inadequate for today's needs. In some instances the Council suggested changes in language to illustrate how provisions might be improved. *Constitutional Provisions Proposed by Constitution Revision Commission Subcommittees* reprints a working paper of the Constitution Revision Commission. This study contains draft articles for a proposed constitution for Montana which were prepared by subcommittees of the earlier Constitution Revision Commission.

The Constitutional Convention Commission concentrated its major research efforts on preparing a series of reports on issues for the Constitutional Convention. This series includes: *Introduction and Summary* (9); *Bill of Rights* (10); *Suffrage and Elections* (11); *The Legislature* (12); *The Executive* (13); *The Judiciary* (14); *Taxation and Finance* (15); *Local Government* (16); *Education* (17); *Revision and Amendments* (19). The reports were initially drafted by research staff under the direction of Commission subcommittees and contain background and comparative material on major areas of the constitution.

Following is a list of other studies, occasional papers and research memorandums published by the Constitutional Convention Commission:

Studies

1. Constitutional Convention Enabling Act
3. The Constitution of Montana and the Constitution of the United States with Index.
4. A Collection of Readings on State Constitution, Their Nature and Purpose
5. Montana Constitutional History
6. New State Constitutions

Occasional Papers

1. Montana Constitution of 1884
2. Enabling Act for the Montana Constitutional Convention of 1889
3. Montana Territorial Organic Act
4. Constitutional Convention of 1866
5. Comparison of the Montana Constitution with the Constitutions of Selected Other States
6. Legislative Council Report on the Montana Constitution
7. Constitutional Provisions Proposed by Constitution Revision Commission Subcommittees

Research Memorandums

1. Memorandum on Constitutional Convention Rules and Supplement
2. Constitutional Amendments 1889-1971
3. A Collection of Readings on Recent Constitutional Revision Activities in the Fifty States 1967-1970
4. Sources of the Montana Constitution
5. Index to Proceedings and Debates of the 1889 Montana Constitutional Convention
6. Constitutions of the Northwestern States
7. Selected Bibliography
8. Memorandum on Convention Preparation Including Preparatory Research, Public Information Programs and Convention Arrangements
9. Selected Readings on the Organization of Constitutional Conventions
10. Reapportionment: Agency and Standards

In addition to its research functions the Constitutional Convention Commission also attempted to keep the Montana public informed of steps in the convention process. As a part of its public information program the Commission operated a speakers bureau, prepared articles for daily and weekly press and magazines, and prepared and distributed an analysis of the issues which might be considered by the constitutional convention.

Finally, the Constitutional Convention Commission was responsible for completing arrangements for the convention. The Commission planned for the neces-

sary convention facilities, supplies and equipment; recommended a staff organization, job descriptions and salary scales; and assembled a file of potential employees which was turned over to the convention. The Commission also conducted a one-day orientation session prior to formal opening of the convention to familiarize delegates with convention organization, services, rules, parliamentary procedure and house-keeping details.

Delegates to the Constitutional Convention

The convention enabling act provides:

The number of members of the convention and the districts from which they are elected shall be the same as that provided for the election of members of the house of representatives of the Montana legislative assembly at the general election to be held November 7, 1972.

The apportionment plan enacted by the 1971 legislature, under which delegates were elected, provides for 100 representatives from 23 districts.

Confusion over the constitutional provision requiring that delegates be "elected in the same manner" as members of the house of representatives was resolved by the Montana Supreme Court. The court, in *Forty-Second Legislative Assembly v. Lennon*, ruled:

The phrase 'elected in the same manner' used in Article XIX, section 8, of the Montana Constitution refers both to constitutional and statutory provisions for 'nomination' and 'election' of members of the house of representatives. The legislative assembly may not now substantially change the election laws for delegates to the constitutional convention and accordingly may not now provide solely for nonpartisan nomination and election of such delegates.

In accordance with this ruling and general statutes, constitutional convention delegates were nominated and elected in a partisan primary and general election.

Qualifications for delegates are the same as for members of the state senate: a delegate must be 24 years old, a United States citizen and a resident of the district for at least 12 months preceding the election. State and local officials and members of the Constitutional Convention Commission were prohibited from serving as delegates.

A total of 274 democrats and 234 republicans were candidates for nomination in the primary election held September 14, 1971. In addition to the democratic and republican nominees, 32 independent and four new reform party candidates competed for convention seats in the special general election held November 2, 1971. Of the 100 delegates elected at the general election 58 are democrats, 36 are republicans and six are independents. The 81 men and 19 women elected range in age from 24 to 72 years; the delegates' average age is 50 years. Approximately 50 per cent of the delegates are native Montanans. Sixty-four per cent of the delegates have had experience in a public or political party office: 19 per cent are former legislators; 36 per cent have held a city or

county office; and nine per cent have held office in one of the two major political parties.

Comparing the educational level of constitutional convention delegates with that of legislators serving in the 1971 session, 55 per cent of the delegates graduated from a college or university and 34 per cent of these hold at least one graduate degree. Another 22 per cent of the delegates have attended an institution of higher learning or business college. In 1971, 44 per cent of Montana's legislators had graduated from a college or university and 21 per cent had received at least one graduate degree. Twenty-eight per cent had attended an institution of higher learning or business college.

Attorneys comprise the largest occupational group with 24 per cent of the delegates in this category. The other significant occupational groups are farming-ranching (20%) business (16%) and education (13%). These figures contrast sharply with the dominant occupations of Montana legislators (all figures are percentages):

| | Agriculture | Professions (Law, Medicine, Education, Engineering) |
|-------------------|-------------|---|
| Senate, 1927-1967 | 36.0-50.0 | 14.3-29.0 |
| House, 1927-1967 | 32.0-43.6 | 13.8-18.2 |
| Senate, 1969 | 42.0 | 25.0 |
| House, 1969 | 33.0 | 24.0 |
| Senate, 1971 | 50.5 | 21.0 |
| House, 1971 | 33.1 | 17.3 |
| ConCon, 1971-72 | 20.0 | 41.0 |

In every legislative session over the 44 year period 1927-1971 agriculture was clearly the dominant occupation. In the 1971-1972 constitutional convention this pattern is reversed. The turnabout may be attributed partially to the interest of many lawyers in rewriting the state's constitution and to the 1971 reapportionment which further reflects the population shift from rural to urban. Elections from the same districts to the 1973 legislative assembly will furnish a stronger basis for such comparison, and perhaps indicate whether the constitutional convention attracted a particular type of candidate different from those seeking legislative seats.

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